

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII

901 N. 5TH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF:

Aveka Manufacturing, Inc.  
279 N. Woodward Avenue  
Fredricksburg, Iowa 50630

EPA ID NO. IAR 000004770

Respondent.

Proceeding under Section 3008(a) and (g) of  
of the Resource Conservation and Recovery  
Act as amended, 42 U.S.C. § 6928(a) and (g)

**COMPLAINT AND  
CONSENT AGREEMENT/  
FINAL ORDER**

Docket No. RCRA 07-2002-0219

**COMPLAINT AND  
CONSENT AGREEMENT/FINAL ORDER**

This administrative action is being conducted pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA") and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, Title 40 C.F.R. Part 22 ("Consolidated Rules of Practice").

The Complainant is the Director of the Air, RCRA, and Toxics Division of the United States Environmental Protection Agency ("EPA") Region 7, who has been duly delegated the authority to bring this action. The Respondent is Aveka Manufacturing, Inc., a company incorporated under the laws of Minnesota and authorized to conduct business in the State of Iowa. The authority to execute the Complaint portion of this Complaint and Consent Agreement/Final Order is provided to the Regional Administrators by EPA Delegation No. 8-9-A, dated March 20, 1985. The Regional Administrator has delegated this authority to the Director of the Air, RCRA and Toxics Division of EPA, Region 7, by EPA Delegation No. R7-8-9-A, dated January 1, 1995.

Complainant and Respondent have agreed to a settlement of the following Factual Allegations, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice, 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3). This Complaint and Consent Agreement/Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Complaint and Consent Agreement/Final Order.

Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$27,500 per day are now authorized for violations of Subchapter III of RCRA that occur after January 30, 1997. Based upon the facts alleged in this Complaint and Consent Agreement/Final Order and upon those factors which the Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA on October 26, 1990, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in this Complaint and Consent Agreement/Final Order.

### **FACTUAL ALLEGATIONS**

#### **Jurisdiction, Statutory and Regulatory Requirements**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).
2. This Complaint and Consent Agreement/Final Order serves as notice that EPA has reason to believe that Respondent violated the regulations found at 40 C.F.R. § 262.34, incorporating 40 C.F.R. §§ 265.193, 265.194, 265.195, and 265.1085.
3. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides that if EPA determines that any person has violated or is in violation of any requirement of Subchapter III, EPA may issue an order assessing a civil penalty for any past or current violation, require compliance, or both.
4. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$27,500 per day are now authorized for violations of Subchapter III of RCRA that occur after January 30, 1997. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), EPA must consider various factors in assessing a penalty, including the seriousness of the violations and any good faith efforts of Respondent to comply with the applicable requirements.

5. Respondent is a Minnesota corporation authorized to conduct business in the State of Iowa and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
6. Respondent, which operates a facility located at 279 North Woodward Avenue in Fredricksburg, Iowa (hereinafter referred to as the "facility"), conducts custom particle processing operations. Specifically, Respondent's facility produces coated particles of particular sizes for its customers to use.
7. Respondent began operations at this facility in 1996 and currently employs approximately 15 full-time employees.
8. On or about April 29, 1997, Respondent submitted a Notification of Hazardous Waste Activity to EPA for its facility. The Notification indicated that Respondent was operating as a Large Quantity Generator (greater than 1000 kilograms per month) of methyl ethyl ketone (U159) hazardous waste.
9. Hazardous waste manifests completed by Respondent show that since approximately July 1997, Respondent has been operating as a large quantity generator of D001 and D035 characteristic hazardous waste.
10. At the time of the EPA inspections in January 1998 and August 1999, Respondent was storing methyl ethyl ketone (MEK) waste in four above-ground storage tanks.
11. On January 13, 1998, EPA conducted a RCRA compliance evaluation inspection at Respondent's facility. Based on information obtained during the inspection, the Respondent was issued a Notice of Violation.
12. On August 26, 1999, EPA's authorized representatives conducted a follow-up RCRA compliance evaluation inspection at Respondent's facility. Based on information obtained during the inspection, the Respondent was issued a Notice of Preliminary Findings.

### **VIOLATION**

#### **OPERATING AS A TREATMENT, STORAGE, OR DISPOSAL FACILITY WITHOUT A RCRA PERMIT OR RCRA INTERIM STATUS**

13. Complainant hereby incorporates the allegations contained in paragraphs 1 through 12 above, as if fully set forth herein.
14. Respondent, as a hazardous waste generator, may accumulate hazardous waste in containers on-site for ninety (90) days or less without a RCRA permit or without having RCRA

interim status, provided certain conditions are met. Those conditions are set forth at 40 C.F.R. § 262.34(a).

### **Secondary Containment for Tanks**

15. The regulations at 40 C.F.R. § 262.34(a)(1) require that while being accumulated on-site, the hazardous waste is placed in tanks and the generator complies with the applicable requirements of Subparts J, AA, BB, and CC of 40 C.F.R. Part 265.
16. The regulations at 40 C.F.R. § 265.193(a), as found in 40 C.F.R. Part 265 Subpart J, require that secondary containment that meets the requirements of 40 C.F.R. § 265.193 be provided for all tank systems. Pursuant to 40 C.F.R. § 265.193(a)(4), because the age of the tank system cannot be documented, the secondary containment must be provided by January 12, 1995.
17. At the time of the January 1998 EPA inspection, none of the four hazardous waste storage tanks at Respondent's facility had been provided with secondary containment.
18. At the time of the August 1999 EPA inspection, the four hazardous waste storage tanks at Respondent's facility still had not been provided with secondary containment.

### **Tank Inspections**

19. The regulations at 40 C.F.R. § 262.34(a)(1) require that while being accumulated on-site, the hazardous waste is placed in tanks and the generator complies with the applicable requirements of Subparts J, AA, BB, and CC of 40 C.F.R. Part 265.
20. The regulations at 40 C.F.R. § 265.195(a), as found in 40 C.F.R. Part 265 Subpart J, require that owners or operators inspect the aboveground portions of tank systems at a facility to detect corrosion or releases of waste at least once each operating day.
21. At the time of the January 1998 EPA inspection, Respondent had not been conducting daily inspections of the four hazardous waste storage tanks at the facility for corrosion or signs of waste releases.
22. At the time of the August 1999 EPA inspection, Respondent was still not conducting daily inspections of the four hazardous waste storage tanks at the facility for corrosion or signs of waste releases.

### **Spill and Overflow Controls**

23. The regulations at 40 C.F.R. § 262.34(a)(1) require that while being accumulated on-site, the hazardous waste is placed in tanks and the generator complies with the applicable requirements of Subparts J, AA, BB, and CC of 40 C.F.R. Part 265.

24. The regulations at 40 C.F.R. § 265.194(b), as found in 40 C.F.R. Part 265 Subpart J, require that owners or operators use appropriate controls and practices to prevent spills and overflows from tank or secondary containment systems. These include, at a minimum, spill prevention and overfill prevention controls such as level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank.

25. At the time of the August 1999 EPA inspection, Respondent did not have overfill prevention controls, such as automatic waste feed cutoff devices or high level alarms, for the four hazardous waste storage tanks at its facility.

#### Air Pollutant Emissions

26. The regulations at 40 C.F.R. § 262.34(a)(1) require that while being accumulated on-site, the hazardous waste is placed in tanks and the generator complies with the applicable requirements of Subparts J, AA, BB, and CC of 40 C.F.R. Part 265.

27. The regulations at 40 C.F.R. § 265.1083(b), as found in 40 C.F.R. Part 265 Subpart CC, require that owners or operators control air pollutant emissions from each hazardous waste management unit (such as tanks, surface impoundments and containers), in accordance with the standards specified in 40 C.F.R. §§ 265.1085 through 265.1088.

28. The regulations at 40 C.F.R. § 265.1085(b), as found in 40 C.F.R. Part 265 Subpart CC, require that owners or operators use Tank Level 1 or Tank Level 2 controls to control air pollutant emissions from tanks. The specific requirements for Tank Level 1 and Tank Level 2 emission controls are outlined in 40 C.F.R. §§ 265.1085(c) and (d), respectively.

29. At the time of the August 1999 EPA inspection, none of the four hazardous waste storage tanks at Respondent's facility was equipped with air pollutant treatment devices that meet the specifications of either 40 C.F.R. §§ 265.1085(c) or (d).

30. Respondent's failure to comply with the conditions set forth in 40 C.F.R. § 262.34(a) subjects Respondent to the requirements of having a permit or interim status, pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, for its on-site storage of hazardous waste.

31. Respondent does not have a RCRA Permit or RCRA Interim Status to operate as a storage facility, in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

#### CONSENT AGREEMENT

32. Respondent and EPA agree to the terms of this Complaint and Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Complaint and Consent Agreement/Final Order. The terms of this Consent Agreement and the

Final Order shall not be modified except by a subsequent written agreement between the parties.

33. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Complaint and Consent Agreement/Final Order set forth below.
34. Respondent admits the facts stipulated in the Complaint and Consent Agreement/Final Order.
35. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the Complaint and Consent Agreement/Final Order.
36. Respondent and Complainant agree to conciliate the matters set forth in this Complaint and Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their respective costs and attorney's fees.
37. This Complaint and Consent Agreement/Final Order addresses all civil administrative claims for the RCRA violation identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.
38. Nothing contained in the Final Order portion of this Complaint and Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.
39. The parties agree that Respondent shall pay a civil penalty of \$76,376, based on Respondent's demonstration of a limited ability to pay the penalty for the violations cited in the Complaint portion of this Complaint and Consent Agreement/Final Order. The payment shall be made according to the schedule set forth in Paragraph 1 of the Final Order.
40. Respondent understands that failure to complete the Compliance Actions described in the Final Order within the designated time frames may, among other things, subject Respondent to civil penalties of up to \$27,500 per day of non-compliance.
41. This Complaint and Consent Agreement/Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.
42. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 11 of the

Final Order, that all requirements hereunder have been satisfied.

43. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement/Final Order and to execute and legally bind Respondent to it.

### **FINAL ORDER**

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Complaint and Consent Agreement/Final Order, IT IS HEREBY ORDERED THAT:

#### **A. Payment of Civil Penalty**

1. Respondent shall pay a mitigated civil penalty of \$76,376.00. This penalty shall be paid according to the following schedule:
  - a. A payment of \$2,500.00 shall be due within thirty (30) days following the effective date of this Complaint and Consent Agreement/Final Order.
  - b. A payment of \$7,500.00 shall be due within ninety (90) days following the effective date of this Complaint and Consent Agreement/Final Order.
  - c. Payments of \$7,500.00 each shall be due on each of the following dates:
    - January 31, 2003;
    - April 30, 2003;
    - July 31, 2003;
    - October 31, 2003;
    - January 30, 2004;
    - April 30, 2004;
    - July 30, 2004;
    - October 29, 2004;
    - January 31, 2005.
  - d. A payment of \$3,992.08 shall be due on April 29, 2005.

Failure to submit any of the required payments by the respective due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest. Failure to timely pay any portion of the civil penalty assessed may result in commencement of a civil action in Federal District Court to recover the full

remaining balance, along with penalties and accumulated interest. Interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently five percent (5%) per annum for the period January 1, 2002 through December 31, 2002) on the unpaid balance until such civil penalty and accrued interest are both paid in full. As provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) will be assessed on any amount not paid within ninety (90) days of the due date.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

Regional Hearing Clerk  
U.S. EPA Region 7  
c/o Mellon Bank  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251

The Respondent shall reference the EPA Docket Number on the check. A copy of the check shall also be mailed to:

Mr. Alex Chen  
Office of Regional Counsel  
U.S. EPA Region 7  
901 N. 5th Street  
Kansas City, Kansas 66101

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Complaint and Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

#### **B. Compliance Actions**

4. Within the time periods specified, Respondent must take the following actions:
  - a. Within thirty (30) days of the effective date of this Complaint and Consent Agreement/Final Order, Respondent shall provide secondary containment for all of its hazardous waste storage tanks in accordance with the requirements contained at 40 C.F.R. § 265.193. In addition, Respondent shall certify to EPA in writing within this time frame that it has in fact provided such secondary containment for all of its hazardous waste storage tanks.



- b. Within thirty (30) days of the effective date of this Complaint and Consent Agreement/Final Order, Respondent shall install spill prevention controls and overfill prevention controls on all of its hazardous waste storage tanks in accordance with the requirements contained at 40 C.F.R. § 265.194. In addition, Respondent shall certify to EPA in writing within this time frame that it has installed these controls on all of its hazardous waste storage tanks.
- c. Within thirty (30) days of the effective date of this Complaint and Consent Agreement/Final Order, Respondent will equip all of its hazardous waste storage tanks with air emission control equipment that meets the specifications of 40 C.F.R. § 265.1085(c) or (d). In addition, Respondent shall certify to EPA in writing within this time frame that it has installed these controls on all of its hazardous waste storage tanks.
- d. Alternatively, if within thirty (30) days of the effective date of this Complaint and Consent Agreement/Final Order Respondent elects to remove from service any and all hazardous waste storage tank systems in order to comply with paragraphs 5a through 5c above, then Respondent shall provide written notification to EPA stating their intent to close the tank system(s). Respondent will then have thirty (30) days from the date of the written notification to submit a closure plan that complies with the tank closure/post-closure care requirements found at 40 C.F.R. § 265.197.

All documents required to be submitted by this Complaint and Compliance Order shall be sent to the attention of:

Stephen Pollard  
ARTD/RESP  
U.S. EPA Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

### C. Parties Bound

5. This Final Order portion of this Complaint and Consent Agreement/Final Order shall apply to and be binding upon Complainant and Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Complaint and Consent Agreement/Final Order.

#### **D. Reservation of Rights**

6. Notwithstanding any other provision of this Complaint and Consent Agreement/Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Complaint and Consent Agreement/Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed twenty-seven thousand five hundred dollars (\$27,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.
7. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Complaint and Consent Agreement/Final Order.
8. Except as expressly provided herein, nothing in this Complaint and Consent Agreement/Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.
9. Notwithstanding any other provisions of the Complaint and Consent Agreement/Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.
10. The headings in this Complaint and Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Complaint and Consent Agreement/Final Order.
11. The provisions of this Complaint and Consent Agreement/Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

9/13/02  
Date

William A. Spratlin  
William A. Spratlin  
Director  
Air, RCRA, and Toxics Division  
U.S. Environmental Protection Agency  
Region 7

9/13/02  
Date

Alex Chen  
Alex Chen  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 7

RESPONDENT:

AVEKA MANUFACTURING, INC.

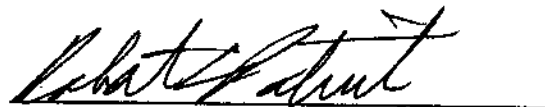
9/3/02  
Date

Signature W. A. Hendrickson

Printed Name W. A. Hendrickson

Title President

IT IS SO ORDERED. This Final Order shall become effective immediately.

A handwritten signature in black ink, appearing to read "Robert Patrick", written over a horizontal line.

Robert Patrick  
Regional Judicial Officer

Date September 16, 2002

IN THE MATTER OF Aveka Manufacturing, Inc., Respondent  
Docket No. RCRA-07-2002-0219

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Alex Chen  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by First Class Mail Return Receipt:

Dean J. Garoutte  
Registered Agent  
Aveka Manufacturing, Inc.  
279 N. Woodward  
Fredricksburg, Iowa 50630

Dated: 9/17/02

  
Kathy Robinson  
Regional Hearing Clerk